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Payment of a Fee as an "Electoral Standard" Held Violative of Fourteenth Amendment

RECENT DECISIONS

Payment of a Fee as an "Electoral Standard" Held Violative of Fourteenth Amendment

Plaintiffs, Virginia residents, brought suit to have the Virginia poll tax declared unconstitutional. The United States District Court, relying on *Breedlove v. Suttles*,[1] dismissed the complaint. The Supreme Court, in reversing, overruled *Breedlove* in part, and *held* that the payment of a fee as an "electoral standard" was violative of the equal protection clause of the fourteenth amendment. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).

Historically, most states required that voters own a specified amount of property.[2] The framers of the Constitution did not regard this limitation on the electorate as undesirable.[3] However, during the Jeffersonian Era the alternative qualification of ownership of personalty, in lieu of realty, became prevalent.[4] At that time, the theory that the best government was the one which permitted the greatest participation of its people, gained recognition.[5] In order to implement this theory, payment of a tax was made an alternative to the ownership of either personalty or realty.[6] Therefore, it can be said that the poll tax was primarily enacted as a method of encouraging voting, rather than as a deterrent to its exercise. Moreover, it should be noted that the poll tax, in and of itself, is not a tax on the right to vote; rather it is a uniform, direct and

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[1] 302 U.S. 277 (1937).

[2] See PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 1-46 (1918).

[3] BEARD, ECONOMIC ORIGINS OF JEFFERSONIAN DEMOCRACY 457-61 (1915). The property qualifications were justified on the theory that only those who contributed to the support of the government through the payment of taxes should be allowed to vote. PORTER, *op. cit. supra* note 2, at 70.

[4] PORTER, *op. cit. supra* note 2, at 7-11.

[5] *Id.* at 71.

[6] Note, *Disenfranchisement by Means of the Poll Tax*, 53 HARV. L. REV. 645, 646 (1940).

personal tax levied upon the person, head or poll. [7]

By the time of the Civil War, property qualifications for voting had been universally abolished, [8] and by 1866 only three states had any tax-paying requirement. [9] Following the Civil War the thirteenth, fourteenth and fifteenth amendments were ratified, and although these amendments prevented outright discrimination on the basis of race, their adoption did result in ten former Confederate states enacting poll taxes as prerequisites to the right to vote. [10] While such taxes were justified as devices to raise revenue and assure voters' responsibility, [11] in reality, they were employed to circumvent the Civil War amendments. [12] In effect, they tended to disenfranchise the Negro. [13]

Since the Civil War, it has been held that the states may require such voting prerequisites as residency,[14] age,[15] lack of prior criminal convictions, [16] literacy [17] and the payment of poll taxes. [18] For example, in *Breedlove v. Suttles,* a Georgia poll tax was attacked as violative of the equal protection clause in that it unreasonably exempted all women, and those men over sixty and under twenty-one from the tax, without exempting other classes of people. The Court in *Breedlove* rejected the equal protection argument only as it applied to the application of the tax. The tax itself was upheld as not violative of the privileges and immunities clause. The Court stated:

> To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate.[19]

Although the states have constitutional authority to determine voter qualifications, their powers are not unlimited. [20] In general, state requirements for voting must be reasonable and nondiscriminatory. [21]

In response to the Court's assertion in *Breedlove* that the states had a right to demand a poll tax as a condition prece-

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[7] "Although frequently thought of as a tax on the privilege of voting, the poll tax is actually a head tax. In this context, 'poll' means 'head' rather than the term customarily used to describe a place of voting." United States v. Texas, 252 F. Supp. 234, 238 (W.D. Tex. 1966).

[8] SEYMOUR & FRARY, HOW THE WORLD VOTES 227-35 (1918).

[9] PORTER, *op. cit. supra* note 2, at 111.

[10] *Supra* note 6, at 647.

[11] *Id.* at 648.

[12] See United States v. Alabama, 252 F. Supp. 95, 99 (N.D. Ala. 1966).

[13] "A primary purpose of the 1902 Amendment to the Texas Constitution making payment of a poll tax a pre-condition to the right to vote was the desire to disfranchise the Negro and the poor white supporters of the Populist Party." United States v. Texas, *supra* note 7, at 245.

[14] Pope v. Williams, 193 U.S. 621 (1904).

[15] Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 51 (1959).

[16] Davis v. Beason, 133 U.S. 333, 345-47 (1890).

[17] Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959).

[18] Breedlove v. Suttles, 302 U.S. 277 (1937).

[19] *Id.* at 283.

[20] See Note, *Federal Protection of Negro Voting Rights,* 51 VA. L. REV. 1053 (1965) for a comprehensive discussion of limits on state authority to determine voter qualifications.

[21] Carrington v. Rash, 380 U.S. 89, 91 (1965); Butler v. Thompson, 97 F. Supp. 17 (E.D. Va.), *aff'd per curiam,* 341 U.S. 937 (1951).

dent to voting, a movement developed to abolish it, at least in regard to federal elections. Five times in ten years, the House of Representatives passed bills abolishing poll taxes in federal elections.[22] All of these attempts were unsuccessful, primarily because of the strong opposition of the Southern bloc. In addition, many opponents of the poll tax opposed its abolition by federal statute believing that such abolition would unconstitutionally interfere with the rights of the states. Despite this opposition, Congress in 1962 adopted the twenty-fourth amendment. This amendment forbids the use of a poll tax in determining voter qualifications in any primary or other election for federal office. It is limited in its applicability, however, in that it does not abolish the poll tax as a means of determining voter qualifications with respect to purely state elections.

As recently as March 1, 1965, the right of a sovereign state to fix nondiscriminatory prerequisites for voting, as decided in *Breedlove,* was fully confirmed. In *Carrington v. Rash,*[23] the Supreme Court held:

> There can be no doubt . . . of the historic function of the States to establish, on a nondiscriminatory basis and in accordance with the Constitution, other qualifications for the exercise of the [voting] franchise. Indeed, 'the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . . .' In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.[24]

The attempt to resolve the problem of poll taxes in state elections culminated in the passage of the Voting Rights Act of 1965.[25] Section 10 of this act, instead of abolishing the poll tax, granted the Attorney General the power to bring actions in the district courts of those states which have a poll tax to determine whether such tax discriminates on the basis of race or denies equal protection under the fourteenth amendment.[26] As a result of this grant of power, the Attorney General sued to abolish the poll tax in Alabama, Texas and Virginia.

In *United States v. Alabama,*[27] the first case to construe the statute, the court held that an Alabama poll tax was violative of the fifteenth amendment since its *purpose* and *effect* were to abridge and deny the Negroes' right to vote. The whole history of the state poll tax statute, according to the court, was tainted with the intent to disenfranchise the Negro.[28] This, coupled with the policies of the Alabama state government, showed that the total effect was to prevent the Negro from voting.[29]

In *United States v. Texas,*[30] a poll tax

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[22] 111 CONG. REC. 9569 (daily ed. May 7, 1965) (remarks of Sen. Edward Kennedy). For a complete history of these attempts, see H.R. REP. No. 1821, 87th Cong., 2d Sess. 4033 (1962).

[23] 380 U.S. 89 (1965).

[24] *Id.* at 91.

[25] 79 Stat. 437, 42 U.S.C. § 1973 (1965).

[26] 79 Stat. 437, 42 U.S.C. § 1973h(b) (1965).

[27] 252 F. Supp. 95 (N.D. Ala. 1966).

[28] *Id.* at 98-99.

[29] *Id.* at 101.

[30] 252 F. Supp. 234 (W.D. Tex. 1966).

statute was declared unconstitutional, not because it was violative of the *equal protection clause,* or of the fifteenth amendment, but because the payment of the poll tax as a condition to the right to vote was an unjustified restriction on the rights guaranteed under the *due process* clause of the fourteenth amendment. The court found it unnecessary to determine whether the poll tax was violative of the equal protection clause as an undue discrimination against the poor since it found the tax invalid under the due process clause.[31] The court asserted that the right to vote was so rooted in the people that to so condition or deny this right would be against the fundamental principles of liberty and justice which are at the base of all our civil and political institutions.[32]

In the instant case, the Supreme Court held the Virginia poll tax unconstitutional as violative of the *equal protection clause* of the fourteenth amendment. The Court reasoned that the poll tax, by making affluence an "electoral standard," is an example of invidious discrimination, since such a standard bears no relation to a person's qualification to vote.[33] The Court compared the requirements of a fee to that of homesite and occupation, and stated that neither affords a permissible basis for distinguishing between qualified voters within the state.[34] It was recognized that a state had a legitimate interest in determining voter qualifications; however, to introduce wealth or payment of a fee would be a capricious or irrelevant factor amounting to a violation of the equal protection clause.[35] To the extent that *Breedlove* sanctioned the use of a poll tax as a "prerequisite of voting," it was explicitly overruled.[36] The Court indicated that it would, through its re-examination of the equal protection clause, continue its policy of closely scrutinizing and carefully confining classifications which might invade or restrain fundamental rights and liberties asserted under the equal protection clause.[37]

Mr. Justice Black in his dissent criticized the majority on two grounds. He asserted that from an historical approach and from previous decisions of the Court the interpretation that the poll tax is unconstitutional under the equal protection clause is erroneous. He reasoned that since no racial discrimination could be shown and since no applicable constitutional amendment had been enacted, the *Breedlove* rule should be followed. According to Mr. Justice Black, the poll tax, although discriminatory, is merely a state qualification which does not violate the equal protection clause and may be justified as both a reasonable and rational exercise of the states' power to determine voter qualifications.[38] More precisely:

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[31] *Id.* at 247.

[32] *Id.* at 255. The Supreme Court itself has called the right to vote the most important means of participating in our democratic society. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which . . . we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

[33] Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 666 (1966).

[34] *Id.* at 667.

[35] *Id.* at 668.

[36] *Id.* at 669.

[37] *Id.* at 670.

[38] *Id.* at 670-75.

> The equal protection cases carefully analyzed boil down to the principle that distinctions drawn and even discriminations imposed by state laws do not violate the Equal Protection Clause so long as these distinctions and discriminations are not 'irrational,' 'irrelevant,' 'unreasonable,' 'arbitrary,' or 'invidious.'[39]

As a second reason for dissenting, Mr. Justice Black objected to what he termed the old "natural-law-due-process formula" to justify striking down state laws as violative of the equal protection clause.[40] He strongly objected to the use of either the due process clause or the equal protection clause as a blank check to alter the meaning of the Constitution. Such broad changes, he believed, should be achieved only through the constitutional amendment process.[41] He concluded that so long as the majority could not show the tax to be "irrational," "irrelevant," "unreasonable," "arbitrary," or "invidious," he could not declare such a tax to be unconstitutional on the basis of a personal hostility to it.[42]

Mr. Justice Harlan, joined by Mr. Justice Stewart, also dissented. He asserted that, by this use of the equal protection clause, the Court had departed from the traditional applications of that clause.[43] According to Mr. Justice Harlan, the test of the equal protection clause is whether a particular classification can be deemed to be founded on a rational state policy. He asserted that a rational basis for Virginia's poll tax as a voting qualification can be found in the argument that it promotes civic responsibility by "weeding out those who do not care enough about public affairs to pay $1.50 . . . for the exercise of the franchise." [44]

The instant case, by overruling *Breedlove,* has abolished any tax imposed as a qualification on the right to vote. The Court, in the elimination of the poll tax, did not base its decision on discrimination as had been done by the district court in *Alabama.* In fact, in the instant case, no history of any discriminatory practice was even alluded to by the majority although discrimination was the principal reason for the adoption of the state's poll tax requirement.[45]

The Court also stepped beyond the decision in *Texas* in that it answered the question which the district court had left unanswered and asserted that the poll tax *does* deny the poor equal protection because of the burden which its payment imposes.

Although the case is limited to poll taxes, it would seem that the Court, by its use of the equal protection clause, can condemn as unconstitutional any standard which is felt to be invidiously discriminatory. The question which arises is how far the Court will go in defining "invidious discrimination." Although the Court denies that it is setting its own standard as to what the equal protection clause should be, the extremely broad language of the majority would seem to indicate a silent intent to allow for even broader interpretations in the future.

Whether other state voting regulations

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[39] *Id.* at 673-74.
[40] *Id.* at 675.
[41] *Id.* at 675-76.
[42] *Id.* at 677.
[43] *Id.* at 681.
[44] *Id.* at 685.
[45] 111 CONG. REC. 9582 (daily ed. May 7, 1965).

will be invalidated under the equal protection clause remains to be seen. In any event, it would appear that future attempts by the states to exercise their power over voting qualifications will be carefully scrutinized and possibly severely limited by that uncertainty which often accompanies such a broad interpretation.

Sit-in Conduct Held Constitutionally Protected

The five Negro petitioners had entered a small regional library[1] in Louisiana with the intention of staging a sit-in. Petitioner Brown requested a particular book. The librarian, after a search, informed the petitioner that the library did not contain the book desired, but that she would arrange to obtain it for him from the state library. After this service had been rendered, the five petitioners were requested to vacate the library by the librarian, her supervisor, and finally by the sheriff. When petitioners refused to leave they were arrested and later convicted of violating Louisiana's "breach of peace" statute.[2] The United States Supreme Court, in a five to four decision, reversed the conviction and *held* that petitioners' conduct was constitutionally protected under the first and fourteenth amendments. *Brown v. Louisiana,* 383 U.S. 131 (1966).

In 1865 slavery was ended in this country by the ratification of the thirteenth amendment. Subsequently, the fourteenth amendment granted to all Americans equal protection of the laws, the privileges and immunities of citizens, and guaranteed that no state would deprive any person of his life, liberty or property without due process of law.[3] In addition, the fifteenth amendment guaranteed all citizens the right to vote without regard to race or color.[4] These amendments, followed by potentially powerful civil rights legislation,[5] apparently gave the Negro a massive array of federally protected rights. These rights, however, were soon limited by decisions of the United States Supreme Court.

In 1872, in the *Slaughter-House Cases,*[6] the fourteenth amendment was interpreted as protecting from state action only the "privileges and immunities" conferred upon one as a citizen of the United States.[7] Thus, those rights which derived from state citizenship were deemed not protected from state action by the fourteenth

[1] The library in question was a local service facility without any reading room. The room where the events took place was quite small, containing two tables and one chair (excluding those used by the librarians), a stove, a card catalogue, and open bookshelves. Brown v. Louisiana, 383 U.S. 131, 135 (1966).

[2] LA. REV. STAT. ANN. § 14:103.1 (Supp. 1965).

[3] U.S. CONST. amend. XIV.

[4] U.S. CONST. amend. XV.

[5] *E.g.,* 14 Stat. 27 (1866), 42 U.S.C. § 1982 (1964); 16 Stat. 144 (1870), 42 U.S.C. § 1981 (1964); 17 Stat. 13 (1871), 42 U.S.C. § 1983 (1964).

[6] 83 U.S. 36 (1872).

[7] See *id.* at 78-80.